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(VENICE COMMISSION)

COMMENTS
ON THE DRAFT AMENDMENTS TO THE LAW
ON THE CONSTITUTIONAL COURT
OF LATVIA

by
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I. INTRODUCTION

1. In a letter dated 13 May 2009 (No. 1-02/113) the President of the Constitutional Court of the Republic of Latvia asked the Venice Commission to give an opinion on the draft of new amendments to the Constitutional Court Law, which had been prepared by a working group established under the Ministry of Justice of the Republic of Latvia on 8 June 2007 (hereinafter referred to as "the Amendments").

The Amendments were approved by the Cabinet of Ministers.

The Amendments were elaborated and submitted to Parliament on 30 July 2008 but they are currently being blocked by the Ministry of Finance, which objects to the introduction of additional social guarantees for the judges of the Constitutional Court on the grounds that no such guarantees have been provided for the judges of the courts of general jurisdiction.

2. The Amendments are aimed to:

- a) establish the procedure of confirmation of judges and the requirements for a candidate;
- b) clarify the term of office;
- c) make the procedure of the Constitutional Court more efficient;
- d) establish the position of the secretary general/administrator of the Constitutional Court;
- e) introduce additional social guarantees for judges (the same as those granted to members of Parliament).

II. RELEVANT LAW AND FACTS CONCERNING THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

3. The Constitutional Court Law of the Republic of Latvia

The Constitutional Court Law of the Republic of Latvia (hereinafter referred to as "the CCL") was adopted by the Latvian Parliament (hereinafter referred to as "Saeima") on 5 June 1996 /"Latvijas Vēstnesis" (Official Gazette) of 14 June 1996, No. 103 (588)/, together with certain Amendments to Article 85 of the Constitution of the Republic of Latvia (hereinafter referred to as "the Constitution"). The CCL came into force on 28 June 1996.

The date of 9 December 1996 can be considered the birthday of the Latvian Constitutional Court, when some of the confirmed Constitutional Court judges, who had not worked as judges before, swore the oath of the judge.

The CCL has until now been amended several times /Amendments of: 11 September 1997, Law, "Latvijas Vēstnesis" (Official Gazette) of 24 September 1997, No. 242/245 (957/960); 30 November 2000, Law, "Latvijas Vēstnesis" (Official Gazette) of 20 December 2000, No. 460/464 (2371/2375); 19 June 2003, Law, "Latvijas Vēstnesis" (Official Gazette) of 1 July 2003, No. 97 (2862); 15 January 2004, Law, "Latvijas Vēstnesis" (Official Gazette) of 23 January 2004, No. 12 (2960); 18 October 2007, Judgment of the Constitutional Court of the Republic of Latvia, "Latvijas Vēstnesis" (Official Gazette) of 23 October 2007, No. 170 (3746); 6 March 2008, Law, "Latvijas Vēstnesis" (Official Gazette) of 13 March 2008, No. 41 (3825); 12 December 2008, Law, "Latvijas Vēstnesis" (Official Gazette) of 23 December 2008, No. 200 (3984)/.

4. Competences of the Constitutional Court of the Republic of Latvia

Article 16 of the CCL prescribes that the Constitutional Court shall review cases regarding:

- 1) compliance of laws with the Constitution;

- 2) compliance with the Constitution of international agreements signed or entered into by Latvia (even before the Saeima has confirmed the agreement);
- 3) compliance of other normative acts or their parts with the legal norms (acts) of higher force;
- 4) compliance of other acts (with an exception of administrative acts) by the Saeima, the Cabinet of Ministers, the President, the Chairperson of the Saeima and the Prime Minister with the law;
- 5) compliance of the Regulations by which the Minister, authorised by the Cabinet of Ministers, has rescinded binding regulations issued by the Dome (Council) of the Municipality with the law;
- 6) compliance of the national legal norms of Latvia with the international agreements entered into by Latvia, which are not contrary to the Constitution.

The Constitutional Court cannot initiate cases on its own initiative. It reviews cases only after a certain range of persons or institutions provided for by law have submitted applications.

Until 2001 the following persons or institutions had the right to submit an application to initiate a case before the Constitutional Court: the President, the Saeima, not less than twenty members of the Saeima, the Cabinet of Ministers, the Plenum of the Supreme Court, the Procurator General, the Council of the State Control, the State Human Rights Bureau, the Dome (Council) of a Municipality, a Minister authorized by the Cabinet of Ministers.¹

However, the Amendments to the CCL of 30 November 2000 significantly enlarged the range of persons/institutions who/which have the right to submit an application to the Constitutional Court to initiate a case reviewing the compliance of laws and international agreements signed by or entered into by Latvia – even before the Saeima has confirmed the agreement – with the Constitution, compliance of other normative acts or their parts with the legal norms (acts) of higher legal force (Items 1–3 of Article 16 of the CCL), as well as compliance of national legal norms of Latvia with the international agreements entered into by Latvia, which are not contrary to the Constitution (Item 6 of Article 16 of the CCL). At the present moment the following may submit an application to the Constitutional Court under the CCL: 1) the President; 2) the Saeima; 3) not less than twenty members of the Saeima; 4) the Cabinet of Ministers; 5) the Prosecutor General; 6) the Council of the State Control; 7) the Dome (Council) of a municipality; 8) the Ombudsman if the institution that issued the disputed act did not rectify the deficiencies found within the time limit specified by the Ombudsman; 9) a court, when reviewing an administrative, civil or criminal case; 10) a judge of the Land Registry when entering real estate – or thus confirming property rights on it – in the Land Book; 11) a person whose fundamental rights established by the Constitution have been violated.

5. European-Continental Model of Constitutional Review

The above survey of the competencies of the Constitutional Court clearly shows that the Republic of Latvia accepted the European-continental model of constitutional review, in literature often called the “Austrian” or “Kelsen's” model.

In Kelsen's traditional pyramid of legal acts the constitution is the peak of the legal system, the cloud-hidden tip of the abstract and deductive logical pyramid with which all subordinate legal acts must be logically in concord. In Kelsen's view and according to his model of deductive rationality, what mattered was the *abstract* logical concordance between higher and lower legal acts. Therefore, the abstract control of constitutionality has ever since been one of the main characteristics of the European-continental model of constitutional review aimed at

¹ See Constitutional proceedings in Latvia / Constitutional Court of the Republic of Latvia Internet Portal, at URL: <http://www.satv.tiesa.gov.lv/?lang=2&mid=3> (access on 15 June 2009).

safeguarding the normative unity of the legal system and at providing structural and functional relations within the system of government.²

Accordingly, Kelsen's model of constitutional review from 1920 involves the interconnection of the principle of the supremacy of the Constitution and the principle of the supremacy of Parliament, in which constitutional matters are dealt with by specialized constitutional courts with specially qualified judges in special proceedings (*principaliter*).³

Development showed, however, that the view whereby the constitutional court should be the guardian of the Constitution as a whole, which could be contravened not only by the legislature but also by acts of other state and public authorities, has resulted in a considerable broadening of its competences and of the circle of its applicants, including individuals.

"The importance that modern constitutionalism has placed on fundamental rights, based on the recognition of personal dignity, such as in the Basic Law of the Federal Republic of Germany, the Spanish Constitution, or the European Charter of Fundamental Rights, has prompted a search for instruments that would effectively insure the protection of these rights. One of these procedures has been to attribute to Constitutional Courts the power to hear individual complaints against the violation of fundamental rights. This implies providing these rights with additional protection to that afforded by the ordinary courts. But it also implies entrusting Constitutional Courts with tasks that are far removed from those of a 'negative legislator' in the words of Hans Kelsen, to convert them into what Professor Cappelletti has termed 'the jurisdiction of freedom'.⁴

In short, as constitutional systems developed, constitutional courts have been vested with more and more competences that emphasize the importance of certain constitutional values that should be protected.⁵

The particular development of the constitutional judiciary in Latvia seems to demonstrate this general development of constitutional systems.

6. Legal Position of the Constitutional Court in Latvia

The Constitution itself does not define the legal position of the Constitutional Court in the constitutional order of the Republic of Latvia, which is organized on the principle of the separation of power into the legislative, executive and judicial branches. Although the Constitution does not contain any explicit provisions concerning this principle, it is indicated in the organization of government laid down in Chapters II–VI of the Constitution and certified in the case-law of the Constitutional Court. For example, in its Decision in case No. 2006-12-01, "On the Compliance of Section 1, Paragraph 1; Section 4, Paragraph 1; Section 6, Paragraph

² See Zupančič, Boštjan M. Constitutional Law and the Jurisprudence of the European Court of Human Rights: An Attempt at a Synthesis // *German Law Journal*, Vol. 2, No. 10, of 15 June 2001, at URL: <http://www.germanlawjournal.com/article.php?id=30> (access on 15 July 2009).

³ See Harutyunyan, Gagik / Mavčič, Arne. Constitutional Review and its Development in the Modern World (A Comparative Constitutional Analysis) / Electronic Book / Yerevan-Ljubljana 1999. at URL: <http://www.concourt.am/Books/harutyunyan/monogr3/ch1p3.htm#a3> (access on 15 July 2009).

⁴ Guerra, Luis Lopez. Constitutional Review and Democracy - Constitutional Courts and the Legislative Process / Seminar on "Strengthening of the principles of a democratic state ruled by law in the Republic of Belarus by way of constitutional control" (Minsk, Belarus, 26-27 June 2003) / European Commission for Democracy through Law (Venice Commission), CDL-JU (2003) 24, Strasbourg, 15 July 2003.

⁵ See Spirovski, Igor. The Role of Constitutional Court in the Building of the Constitutional Democracy // *Journal of Constitutional Law in Eastern and Central Europe* (2005), volume 12, issue 1, 53-82.

3; Section 22 and Section 50 of the Office of the Prosecutor Law with Sections 1, 58, 82, 86 and 90 of the Republic of Latvia Satversme” of 20 December 2006, the Constitutional Court explicitly referred to the principle of the separation of power. The relevant concluding part of the Decision reads as follows:

“6.1. Section 1 of the Satversme determines: “Latvia is an independent democratic republic”. Several principles of a law-governed state follow from this Section, inter alia also the principle of separation of State power. ... This principle manifests itself in separation of the State power into legislative, executive and judicial power, which are realized by independent and autonomous institutions. It guarantees balance and mutual control among them and furthers moderation of power [...].

6.2. Division of competencies of the State institutions of the three powers, which realize the power and create the system of “balance and counterbalance”, has been embodied in the norms of the Satversme institutional part. ... For separation of power to reach its aim, separate functions of power shall be entrusted to different constitutional institutions (...).

...

14. The principle of separation of power means that the State power is divided into legislation, State administration and court adjudication. The function of legislation is the adoption of normative acts, which determines the action of an individual in accordance with public aims. The function of administration is realization of the decisions by the legislator, namely, realization of the normative acts, passed by it. The function of adjudication is solving of disputes in accordance with the normative acts, adopted by the legislator.”⁶

7. The Constitutional Court of Latvia as a Part of the Judicial Branch of Government

The following suggests that the Latvian Constitutional Court is part of the judicial branch of government:

Chapter VI of the Constitution entitled "Courts" contains Article 85 (Articles 82 - 86). This, together with Article 82, prescribes as follows:

"82. In Latvia, court cases shall be heard by district (city) courts, regional courts and the Supreme Court, but in the event of war or a state of emergency, also by military courts. Judges shall be independent and subject only to the law.

...

85. In Latvia, there shall be a Constitutional Court, which, within its jurisdiction as provided for by law, shall review cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred upon it by law. The Constitutional Court shall have the right to declare laws or other enactments or parts thereof invalid. The Saeima shall confirm the appointment of judges to the Constitutional Court for the term provided for by law, by secret ballot with a majority of the votes of not less than fifty-one members of the Saeima."

⁶ Decision in case No. 2006-12-01 "On the Compliance of Section 1, Paragraph 1; Section 4, Paragraph 1; Section 6, Paragraph 3; Section 22 and Section 50 of the Office of the Prosecutor Law with Sections 1, 58, 82, 86 and 90 of the Republic of Latvia Satversme" of 20 December 2006, Constitutional Court of the Republic of Latvia Internet Portal, at URL: http://www.satv.tiesa.gov.lv/upload/judg_2006-12-01.htm (access 16 July 2009).

Furthermore, the CCL defines the Constitutional Court as "an independent institution of *judicial power*" (Article 1/1 of the CCL).

Finally, in its Decision in case No. 2006-12-01 of 20 December 2006 (cited above), the Constitutional Court itself pointed out:

"9.2. In Section 82 of the Satversme is included neither the exhaustive list of those institutions, which adjudicate justice, nor the institutions pertaining to judicial power.

First of all, Section 85 of the Satversme determines that in Latvia there shall be a Constitutional Court. When assessing the authority conferred to the Constitutional Court by Section 85 of the Satversme to review cases concerning the compliance of laws with the Satversme, as well as other matters regarding which jurisdiction is conferred upon it by law, it can be concluded that the Constitutional Court adjudicates justice. The Constitutional Court, on the basis of legal norms settles specific disputations on the compliance of legal norms with the norms of higher legal force in a process in which at least two members of the process with opposite viewpoints participate."

Therefore, both the types of courts, i.e. courts of general jurisdiction and the Constitutional Court, "adjudicate justice" and are (among other things) different parts of the judicial branch of power in the constitutional order of the Republic of Latvia.

However, Articles 82 and 85 clearly show that the Latvian Constitution makes a substantial difference in competences between the courts of general jurisdiction, which deal with "court cases" (Article 82 of the Constitution), and the Constitutional Court, which deals with "cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred upon it by law" and which "shall have the right to declare laws or other enactments or parts thereof invalid" (Article 85 of the Constitution).

The Constitutional Court itself strongly supports this difference. In its Decision in case No. 04-03/99/, "On Conformity of the "State Stock Company – the Real Estate Agency Regulations on the Procedure by which Free Apartments in Dwelling Houses under the Management of the Real Estate Agency shall be Rented" with Articles 2, 10 and 11 of the Law "On Housing Support Granted by the State and Local Governments", Article 40 of the Law "On the Rent of Dwelling Space" and Item 4 of the Transitional Provisions of the Law "On the Privatisation of State and Local Governments Apartment Houses", the Constitutional Court emphasized this difference:

"Courts, incorporated into the legal system of general jurisdiction, are authorized to review civil liability controversies, criminal cases as well as claims arising from administratively legal relations. However, in compliance with the law, the above courts are not authorized to declare acts of normative nature null and void. Therefore in 1996 in Latvia was established the court, incorporated into the legal system of jurisdiction – the Constitutional Court, which in compliance with Article 85 of the Satversme (Constitution) is authorized to review cases regarding compliance of laws and other acts with the Satversme (Constitution) and other laws."⁷

⁷ See Endziņš, Aivars. The principle of the separation of powers and the experience of the Constitutional Court of the Republic of Latvia / Seminar on "Cases of Conflicts of Competence between State Powers before the Constitutional Court" organised by the Venice Commission in co-operation with the Constitutional Court of Armenia, Yerevan, Armenia, 4-5 October 1999 / CDL-JU (2000) 30, Strasbourg, 8 June 2000, at URL: [http://www.venice.coe.int/docs/2000/CDL-JU\(2000\)030-e.pdf](http://www.venice.coe.int/docs/2000/CDL-JU(2000)030-e.pdf) (access 17 July 2009).

Consequently, the Constitution also differentiates between the election and legal position of judges of the courts of general jurisdiction and those of the Constitutional Court. Judges of the courts of general jurisdiction are elected for their lifetime (the age of retirement from office for judges of courts of general jurisdiction may be determined by law – Article 84 of the Constitution) while judges of the Constitutional Court are confirmed by the Saeima for a certain period of time provided for by law (Article 85 of the Constitution).

It is therefore clear that the Latvian Constitutional Court, like any other constitutional court, is neither a "positive legislator" nor an "ordinary trial court". Although it influences law, it neither makes nor administers it.⁸ With regard to this, Spirovski makes the following points:

"One should bear in mind that the key function of the constitutional court in its theoretical dimension is to safeguard the unity of the hierarchical normative system itself, not its manifestations, not the legal politics which is formulated in the parliament, and not the concrete situations which should be resolved in accordance with it. The evaluation of the constitutionality of laws, therefore, is a principal question of the normative system and it should be solved in a principled, abstract way. The provision of unity of the normative system i.e. protection of the constitution as a higher norm, is a function of the constitutional court which can be spread over the entire content of the constitution, as well as over the norm which guarantees the given concept of separation of powers and fixes the boundaries of the different branches. The constitutional court, within this approach, is a representative of the supremacy of the constitution i.e. of its normative validity and theoretically it remains out of the system of the separation of powers."⁹

The above remarks indicate that raising the protection of the constitution on the level of institutionalized mechanisms is not an act of redistributing the functions of government but rather an act of institutionalizing the principles and limitations of its exercise. Constitutional courts not only provide for the stability of the constitution and respect for the rule of law but also, beyond this classical approach, play a distinctive role in deepening and strengthening the democratic process, in which the constitution serves as a main pillar. Therefore, the decisions of constitutional courts have political effects by their nature.

To summarise, the real power of the centralized constitutional courts lies in their constitutionally prescribed competences and the effects of their decisions.

This conclusion seems to be important for the following assessments of the Amendments in view of their compatibility with the Constitution of the Republic of Latvia as well as with international standards, especially those established by the Council of Europe and its Venice Commission. The Constitutional Court Laws of the other member states of the Council of Europe may also set a comparative pattern for assessing the Amendments.

III. CONSIDERATION OF THE AMENDMENTS

8. Requirements for a candidate for the position of a judge of the Constitutional Court Amendment 1 – The Second Paragraph of Article 4, "Confirmation of a judge of the Constitutional Court"

The Second Paragraph of Article 4 of the CCL that is currently in force prescribes:

⁸ Some authors argue that constitutional judges function as "positive legislators" with transformative effects on parliamentary governance. See Alec Stone Sweet. The politics of constitutional review in France and Europe // International Journal of Constitutional Law, 2007 5(1), 69-92.

⁹ Spirovski, *ibidem*.

"(2) Any citizen of Latvia who has a university level legal education and at least ten years' working experience in a legal profession or in a scientific or educational field in a judicial specialty in a research or higher educational establishment, may be confirmed a judge of the Constitutional Court. A person who may not be nominated for the office of a judge under Article 55 of the Law "On Judicial Power" must not be appointed as a judge of the Constitutional Court."

The Amendment proposes the following changes:

- to provide for the following wording of the Second Paragraph:

"(2) The following persons may be confirmed a judge of the Constitutional Court:

1) a person who is a citizen of the Republic of Latvia;

2) a person with an impeccable reputation;

3) a person who has reached the age of 40 at the date when a proposition of confirmation of a Constitutional Court judge is submitted to the Saeima Presidium;

4) a person who has the second level higher vocational education (or bachelor degree in law) and a master's degree in law;

5) a person who has at least ten years working experience in a legal profession or scientific and pedagogical work in law in a scientific institution or a higher education establishment. Only the working period after acquisition of the second level higher vocational education or a bachelor degree in law shall be added to the working experience."

- to supplement Paragraph 2 thereof with the following wording:

A person who may not be nominated for the office of a judge under Section 55 of the Law 'On Judicial Power' must not be nominated for the office of a judge of the Constitutional Court."

The *Annotation of the Amendments* gives the following general explanation for Amendment 1:

"The Constitutional Court is an institution, which serves as a barrier in ensuring protection of the principle of constitutionality and the supreme command of the rule of law in all branches of power. The right of the Constitutional Court to control constitutionality of normative acts is the supreme instrument of the entire legal and political system (*J.Pleps, E.Pastars, I.Pakalne Konstitucionālās tiesības - Latvijas Vēstnesis, 2004. pp. 584*). Therefore it is just to provide for additional requirements for the candidates to the position of a judge of the Constitutional Court regarding their education, working experience and reputation ..."

We shall continue by examining each of the legal requirements and legal restrictions that are proposed as changes or amendments to the Second Paragraph of Article 4 of the CCL.

8.1. The legal requirement of Latvian citizenship/nationality for a person who is a candidate for the position of a Constitutional Court judge is a standard and ordinary one.

Only a few states recognize the possibility of having constitutional court judges who are not their own citizens/nationals. For example, the Constitutional Court of Bosnia and Herzegovina has nine members. The respective assemblies or parliaments of the Entities elect the six "national" judges (the House of Representatives of the Federation of Bosnia and Herzegovina elects four judges, the National Assembly of the Republika Srpska elects two judges). The remaining three judges are appointed by the President of the European Court of Human Rights after consultation with the Presidency of Bosnia and Herzegovina (the so-called "international

judges"). The international judges appointed by the President of the European Court of Human Rights must not be citizens/nationals of Bosnia and Herzegovina or of any neighbouring state. Similarly, the Constitutional Court of the Republic of Kosovo consists of nine judges. The President of the Republic of Kosovo appoints six "national" judges on the proposal of the Assembly. However, there are also three international judges appointed by the International Civilian Representative (ICR) for Kosovo upon consultation with the President of the European Court of Human Rights. Instituting a system of international judges for the national Constitutional Courts in Bosnia and Herzegovina and Kosovo resulted from the exceptional and specific historical and political circumstances in which these states gained their sovereignty under the broad supervisory roles of foreign powers throughout the transitional period.

8.2. If the Saeima accepts the Amendment, the "impeccable reputation" of a candidate for the position of a Constitutional Court judge will be a newly introduced criterion, which does not exist in the CCL currently in force.

It seems that the requirement of the "impeccable reputation" of a candidate for the position of a Constitutional Court judge relates to both the candidate's personality traits and his/her professional reputation.

In comparison, the Lithuanian Constitution contains the same requirement (a candidate for the position of a judge of the Constitutional Court must also have "an impeccable reputation") and the Constitution of the Czech Republic has a similar one (a candidate for the position of a judge of the Constitutional Court must have "a character beyond reproach").

Most other Constitutions or Constitutional Court Acts do not explicitly require that a candidate for the position a Constitutional Court judge must have an "impeccable reputation" related to his/her personality traits. Instead, their requirements are limited to candidates' professional reputation. For example, the Constitutional Tribunal judges in Poland are chosen "amongst persons distinguished by their knowledge of the law". In Spain, a candidate must be a "jurist of recognised standing". In Austria, all the members of the Constitutional Court (as well as the substitute members) qualify for the position through their extensive, relevant professional experience. In order to become a judge of the Constitutional Court of the Russian Federation, a person must have a "recognized high qualification" in law. In Serbia, a judge of the Constitutional Court is elected and appointed from among "the prominent lawyers". In Croatia, a person who is a candidate for the position a Constitutional Court judge must be "a notable jurist", etc.

The legal requirement of an "impeccable reputation" for a candidate for the position of a Constitutional Court judge undoubtedly belongs to "undeterminable legal concepts". Because of its high level of abstraction and dependence on relevance in context, it is hardly possible to comprehensively define it. Accordingly, legal standards and maximally objective criteria must be sought in this field from which to derive what the "impeccable reputation" of the person means in the specific context and to decide whether this may be used as a legal argument in law. Because of its very nature this requirement may in any case lead to vehement, wide-ranging and long debates about the "impeccable reputation" of a particular candidate and result in much comment and a strained atmosphere in public life, which could adversely affect the Constitutional Court itself.

In summary, the legal requirement that a candidate for the position of a Constitutional Court judge must have an "impeccable reputation" complies with international standards but this indeterminate concept requires the preliminary establishment of the appropriate standards for its definition and uncontroversial i.e. consistent parliamentary practice in its application.

8.3. If the Saeima accepts the Amendment, another new criterion will be the legal requirement that a candidate for the position of a judge of the Constitutional Court must be at least 40 years

old (on the date when the proposal for confirmation of the Constitutional Court judge is submitted to the Saeima Presidium). The requirements in the Constitutional Court Law currently in force do not provide for any age restriction.

The *Annotation of the Amendments* gives the following explanation for this part of Amendment 1:

"Since the position of a judge of the Constitutional Court is regarded as the highest peak of carrier in institutions of judicial power, this requires not only knowledge and professional experience but also life experience and personal maturity; like the Satversme (Constitution) provides for the minimum age for the State President, the requirement of the age of 40 years is also planned to apply to a judge of the Constitutional Court."

To the best of our knowledge, the lowest minimum age limit for a Constitutional Court judge among Council of Europe member states is 35 (Armenia). However, the lowest minimum age limit for constitutional courts and other highest national courts with constitutional jurisdiction at all is 30 years (Tajikistan). The highest minimum age requirement is 45 years (Hungary).

Many countries do not specify a minimum age for Constitutional Court judges (Albania, Bulgaria, Croatia, France, Montenegro, Romania, Portugal, Spain, etc.). Italy is specific in this matter: Constitutional Court judges are selected from a restricted category of legal practitioners with a high level of training and experience. These are judges or retired judges from the highest levels of the judiciary (*supreme magistrature*) – that is, the Supreme Court (*Corte di cassazione*), the Council of State (*Consiglio di Stato*) and the Court of Auditors (*Corte dei conti*) – law professors and lawyers with at least twenty years' experience in legal practice. There is no maximum or minimum age limit, but given the requirement of belonging to the senior magistracy, having a high-level academic qualification or long professional experience, judges tend to be appointed to the Court in their fifties, sixties and seventies.¹⁰

The required age limit of 40 years as provided for in the Amendment can be found in other countries as well (Czech Republic, Germany, Russian Federation, Serbia, Slovakia, Slovenia, Ukraine).

The legal age limit of 40 years of a candidate for the position of a Constitutional Court judge undoubtedly has the objective of guaranteeing his/her professional and life experience.¹¹

The required age of 40 years as provided for in Amendment 1 may be considered neither too high nor too low. It appears to be reasonable without overly restricting the circle of possible candidates.

8.4. The legal requirement of second-level higher vocational education (or a bachelor's degree in law) and a master's degree in law of the candidate for the position of a Constitutional Court judge seems to be well-founded.

The *Annotation of the Amendments* gives the following explanation for this part of Amendment 1:

¹⁰ See The Structure of the Court. The Composition of the Court, The Italian Constitution Court Internet Portal, at URL: http://www.cortecostituzionale.it/versionsi_in_lingua/eng/lacortecostituzionale/cosaelacorte/pag_13.asp (access 18 July 2009).

¹¹ See CDL-AD(2004)024 Opinion on the Draft Constitutional Amendments with regard to the Constitutional Court of Turkey, adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004) on the basis of comments by Mr Péter Paczolay (Hungary), § 25.

"Under the Second Paragraph of Article 4 of the Constitutional Court Law, a person with higher legal education ... can be confirmed a judge of the Constitutional Court. At present, in higher education institutions it is possible to acquire academic education, bachelor, master and doctor's degree, as well as professional qualification of the fourth and the fifth levels and that of bachelor and master degree. A college is an educational establishment that works according to the first level higher vocational education programme (college education) and provides for the possibility to acquire the fourth level of professional qualification. In each of these programmes, this is the term of acquisition of the education programme that differs. Taking into consideration the jurisdiction of the Constitutional Court, it is necessary to increase requirements regarding education acquired, which would comply more with the real situation of nowadays."

Considering the different levels of higher legal education in Latvia today, the requirement in the Constitutional Court Law currently in force (any citizen of Latvia "who has a university level legal education") appears to be out of date.

Therefore, the Amendment is fully justified in insisting on educational requirements to be increased to a bachelor's (or equivalent) and master's degree in law.

8.5. The legal requirement for a candidate for the position of a judge of the Constitutional Court to have at least ten years working experience in a legal profession or scientific and educational work in law in a scientific institution or a higher education establishment of already exists in the CCL currently in force (it prescribes "at least ten years' working experience in a legal profession or in a scientific or educational field in a judicial specialty in a research or higher educational establishment").

The aim of the Amendment is to add a new requirement: only the working period after the second-level higher vocational education or a bachelor's degree in law is acquired shall be added to the working experience.

The *Annotation of the Amendments* gives the following explanation for this part of Amendment 1:

"It is also necessary to establish the date which would serve as the starting point of working experience of a person that is necessary for holding a position of a judge of the Constitutional Court. It should not be allowed that work that requires no education as a prerequisite to work independently (the work during the course of studies) is included into the length of service (working experience) required."

The member states of the Council of Europe mostly require 10 or 15 years of working experience in the legal profession for a candidate for judge of the Constitutional Court.

For example, a candidate for judge of the Constitutional Court must have 15 years of working experience in the legal profession in Albania, Bulgaria, Croatia¹², Montenegro, the Russian Federation, Slovakia and Spain, while in Austria, the Czech Republic, Lithuania and Ukraine he/she must have 10 years of working experience in the legal profession.

Therefore, the requirement that a candidate for a Constitutional Court judge must have certain working experience in the legal profession complies with international standards.

¹² Judges of the Constitutional Court of the Republic of Croatia must have at least 15 years of experience in the legal profession, with the exception of a person who has obtained a doctoral degree in legal science and fulfils all the other legal conditions. Such a person must have at least 12 years of experience in the legal profession (Article 5/2 of the Constitutional Act on the Constitutional Court of the Republic of Croatia).

The new requirement establishing the date that would serve as the starting point of a person's working experience in the legal profession, necessary for holding the position of a judge of the Constitutional Court, may also be considered justified. However, the case-law of the constitutional courts of other countries shows that disputes may anyway arise about whether the candidate complies with the prescribed requirement or not. For example, during the election of a judge of the Constitutional Court of the Republic of Croatia, the non-elected candidate who had participated in the same election proceedings disputed the Decision of the Croatian Parliament on the election of her counter-candidate, claiming that the elected judge had not proved that she complied with the statutory 15 years of experience in the legal profession. This dispute set off wide-ranging public discussion in the Republic of Croatia about what kind of jobs provide "working experience in the legal profession". On the day when she applied at the competition for a judge of the Constitutional Court, the judge whose election was challenged had undoubtedly completed almost 16 years of service after graduating in law and after passing the bar examination. Nevertheless, the issue discussed in public was whether her working experience as an administrator in an international humanitarian organisation (RCT-IRCT - The Rehabilitation and Research Center for Torture Victims/The International Rehabilitation Council for Torture Victims, Denmark, Copenhagen, Zagreb Office) and her work as a professional collaborator in a bank may be considered to be "working experience in the legal profession". In its Decision No. U-III-443/2009 of 30 April 2009, the Constitutional Court of the Republic of Croatia adopted the following principle:

"Ad 8.4.) What is "working experience in the legal profession" and how is it proved?

The concept of "working experience in the legal profession" is legally undefined. ... The Constitutional Court must in the first place point out that the concepts of "working experience" and "years of service" are not synonymous.

The Constitutional Court notes that working experience in the legal profession may also be obtained outside the years of service that are proved by the employment certificate. On the other hand, the years of service recorded in the employment certificate are in themselves not proof of "working experience in the legal profession" (for example, it is possible for a graduate jurist to be employed in a company or institution but not as a lawyer, for example on a job requiring lower qualifications that have nothing to do with the legal profession).

In relation to working experience in the legal profession, in its declaration delivered to the Constitutional Court the Committee for the Constitution, Standing Orders and Political System of the Croatian Parliament referred to the guidelines for the election of judges of constitutional courts contained in the relevant documents of the Venice Commission of the Council of Europe (The Composition of Constitutional Courts, European Commission for Democracy through Law (Venice Commission), Science and Technique of Democracy, No. 20, Strasbourg : Council of Europe Publishing, December 1997 - CDL-STD(1997)020; Vademecum on Constitutional Justice, 11 May 2007 - CDL-JU(2007)012). These guidelines indicate that the judges of constitutional courts need different qualifications than the judges of regular courts, and also that the composition of constitutional courts must cover a broad span of legal experience. Specifically, the Committee for the Constitution, Standing Orders and Political System of the Croatian Parliament referred to the opinion of the Venice Commission CDL-AD(2006)006 (Opinion on the Two Draft Laws amending Law NO. 47/1992 on the organisation and functioning of the Constitutional Court of Romania; part of the citation also in: Vademecum on Constitutional Justice, 11 May 2007 - CDL-JU(2007)012, p. 7.), which notes that *"The establishment of a specialised Constitutional Court as conceived by Kelsen and first applied in the Austrian Constitution of 1920, rests on the recognition that the annulment of acts of Parliament, which represents the sovereign people, is different in nature from the ordinary civil, criminal or administrative jurisdiction. The composition of specialised constitutional courts is different from that of the ordinary*

judiciary because the constitutional court needs added legitimacy (...).The closer this composition reflects the various currents of society the higher this legitimacy will be." (point 14 of the Opinion) Thus there are requirements *"for a wider range of experience for constitutional court judges than only that of judges and prosecutors but should include scholars or professors, perhaps even lawyers who are experienced in the various fields of law (e.g. international law)."* (point 19 of the Opinion)

The scholars who delivered their expert opinions to the Constitutional Court for the needs of these proceedings also support broadening the concept of "working experience" and "legal profession" under Article 5 para. 1 of the Constitutional Act.

The Constitutional Court deems the above opinions and guidelines an expression of the contemporary evolution in legal professions which is reflected in the issues about which a judge of the Constitutional Court must decide. Accordingly, in the election of judges of the Constitutional Court "working experience in the legal profession" should not be limited to classical legal work within the framework of the judiciary. In other words, "working experience in the legal profession" under Article 5 para. 1 of the Constitutional Act should be seen as the performance of every kind of legal work independently of the particulars of the work and the person of the employer."¹³

8.6. Finally, Amendment 1 proposes that a person who may not be nominated for the office of a judge under Section 55 of the Law 'On Judicial Power' must not be nominated for the office of a judge of the Constitutional Court.

The CCL that is currently in force prescribes as follows:

"A person who may not be nominated for the office of a judge under Article 55 of the Law "On Judicial Power", must not be appointed as a judge of the Constitutional Court."

Section 55 of the Law "On Judicial Power" prescribes:

"Section 55. Persons who May Not become Candidates for a Judge

A candidate for a judge may not be a person:

- 1) who has been previously convicted of committing a crime (irrespective of whether the conviction has been extinguished or set aside);*
- 2) who has previously committed a crime, but has been released from serving the sentence in connection with the expiration of a limitation period, amnesty, or clemency;*
- 3) who has been subjected to criminal liability, but the criminal matter against whom has been terminated on the basis of non-rehabilitativeness;*
- 4) against whom a criminal matter has been initiated and against whom an investigation is being conducted;*
- 5) who are or have been employed in staff positions or as supernumeraries of the State Security Committee of the USSR or the Latvian S.S.R., the Ministry of Defence of the USSR, or the state security service, army intelligence service or counter-intelligence service of Russia or another state, or as an agent, resident or safehouse keeper of the aforementioned institutions; or*

¹³ Decision No. U-III-443/2009 held on 30 April 2009 (English version), The Constitutional Court of the Republic of Croatia Internet Portal, at URL: <http://www.usud.hr> - Case-law (access 16 July 2009).

6) who are or have been participants (members) of organisations, which are prohibited by the laws of the Republic of Latvia, decisions of the Supreme Council, or adjudications of a court, after the prohibition of such organisations."

The above shows that this part of Amendment 1 proposes replacing the words "must not be appointed" with the words "must not be nominated". This "turns" the present legal restriction on *confirming* persons who fall under Section 55 of the Law "On Judicial Power" for judges of the Constitutional Court (which lay with the Saeima as the body empowered to confirm judges of the Constitutional Court) into the legal restriction on *proposing* candidates for judges of the Constitutional Court who fall under Section 55 of the Law "On Judicial Power". This legal restriction, therefore, is no longer directed at the Seima but at the bodies empowered to propose candidates for judges of the Constitutional Court, i.e. members of the Saeima, the Cabinet of Ministers and the Plenum of the Supreme Court.¹⁴

The *Annotation of the Amendments* does not give any explanation for this part of Amendment 1. Furthermore, the Venice Commission has restricted the scope of this opinion to the provisions especially mentioned. Since these do not include the provisions of Section 55 of the Law "On Judicial Power", we have not examined them in more detail in this opinion.

We therefore only refer to the judgment of the European Court of Human Rights in the case of *Ždanoka v Latvia*,¹⁵ which might to a certain degree also be interesting in the context of the election of judges of the Constitutional Court as it concerns the circle of persons mentioned in paragraphs 5 and 6 of Section 55 of the Law "On Judicial Power".

In the *Ždanoka* case the Grand Chamber of the European Court of Human Rights did not find a violation of Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. On one hand, it took the exceptional nature of historical circumstances into account and did not find the restriction either arbitrary or disproportionate at the particular place and point in time:

"133. While such a measure may scarcely be considered acceptable in the context of one political system, for example in a country which has an established framework of democratic institutions going back many decades or centuries, it may nonetheless be considered acceptable in Latvia in view of the historico-political context which led to its adoption and given the threat to a new democratic order posed by the resurgence of ideas which, if allowed to gain ground, might appear capable of restoring the former regime."

On the other hand, the Grand Chamber of the European Court of Human Rights specifically indicated the limited nature and duration of such measures:

"135. It is to be noted that the Constitutional Court observed in its decision of 30 August 2000 that the Latvian parliament should establish a time-limit on the restriction. In the light of this warning, even if today Latvia cannot be considered to have overstepped its wide margin of appreciation under Article 3 of Protocol No. 1, it is nevertheless the case that the Latvian parliament must keep the statutory restriction under constant review, with a view to bringing it to an early end. Such a conclusion

¹⁴ Article 4/1 of the CCL prescribes: "Justices of the Constitutional Court shall be confirmed by the Saeima. Three justices of the Constitutional Court shall be confirmed upon the recommendation of not less than ten members of the Saeima, two – upon the recommendation of the Cabinet of Ministers, but two justices of the Constitutional Court – upon the recommendation of the Plenum of the Supreme Court. The Plenum of the Supreme Court may select candidates for the office of a justice of the Constitutional Court only from among Republic of Latvia judges."

¹⁵ *Ždanoka v. Latvia* (GC), judgment of 16 March 2006, Application no, 58278/00.

seems all the more justified in view of the greater stability which Latvia now enjoys, *inter alia*, by reason of its full European integration (...). Hence, the failure by the Latvian legislature to take active steps in this connection may result in a different finding by the Court (...)."

The judgment mentioned above concerned a candidate for election to a political office, i.e. as member of parliament (Saeima). In the case of the election or appointment of legal professionals, Professor Uzelac notes: "As Franz Neumann claimed, an independent and impartial judiciary is the irreducible minimum of democracy (...). Therefore, lustration among legal professionals, above all among judges and state prosecutors, should have a special significance. But, such a process is particularly difficult and sensitive. In this process, the same instruments that are designed to be protectors of the rule of law may become their opposite."¹⁶ Therefore, the warning the European Court of Human Rights expressed in the Ždanoka judgment that "the Latvian parliament must keep the statutory restriction under constant review, with a view to bringing it to an early end" should be especially carefully considered in the case of legal professionals, including the judges of the Constitutional Court.

8.7. In conclusion, all the requirements for a candidate for the position of a Constitutional Court judge provided for in Amendment 1 can in principle be considered to comply with international standards.

9. Term of Office of a Judge of the Constitutional Court

Amendment 2 – The First and Third Paragraphs of Article 7, "Term of office of a judge of the Constitutional Court"

9.1. The First Paragraph of Article 7 of the CCL that is currently in force prescribes:

"(1) The term of office of a judge of the Constitutional Court shall be ten years as of the day when he/she took up his/her duties of office pursuant to Article 5 of this Law."

Amendment 2 proposes the following change: to supplement the words "duties of office" in the First Paragraph of Article 7 with the words "except for the cases provided for in the Third and

the Fourth Paragraphs of Article 11 of this Law".¹⁷

9.2. The Third Paragraph of Article 7 of the CCL that is currently in force prescribes:

"(3) One and the same person may not be a judge of the Constitutional Court for more than 10 years concurrently with an exception of cases provided for in the Third and Fourth Paragraphs of Article 11 of this Law."¹⁸

¹⁶ Uzelac, Alan. (In)surpassable barriers to lustration: quis custodiet ipsos custodes? // in: Vladimira Dvorakova; Anđelko Milardović (eds.), Lustration and Consolidation of Democracy and the Rule of Law in Central and Eastern Europe, Zagreb, 2007, 47-64, at URL: bib.irb.hr/datoteka/315866.Lustration-Uzelac_text.doc (access 19 July 2009).

¹⁷ The Third and Fourth Paragraphs of Article 11 of the CCL prescribe: (3) If upon termination of authority of office of a Constitutional Court justice – or upon his/her reaching the age established in the First Paragraph of Article 8 of this Law – the Saeima has not confirmed another justice, the authority of the Constitutional Court justice shall be regarded as prolonged to the moment of confirmation by the Saeima of a new justice and he/she has sworn the oath. (4) The Constitutional Court justice, whose authority has terminated or who has reached the age established in the First Paragraph of Article 8, continues carrying out the duties of the Constitutional Court justice in reviewing the cases, proceedings of which have been commenced in his presence."

¹⁸ See Note 17.

Amendment 2 proposes the following change: to provide for the following wording of the Third Paragraph:

“(3) One and the same person may be a judge of the Constitutional Court only once.”

Therefore, Amendment 2 specifies that the term of office of a judge of the Constitutional Court is not renewable because it provides that one and the same person can hold the position of a judge of the Constitutional Court only once.

The *Annotation of the Amendments* gives the following explanation for Amendment 2:

"The Third Paragraph of Article 7 (of) the Constitutional Court (Law) provides that one and the same person may not be a judge of the Constitutional Court for more than ten years running, however it does not provide for the number of offices of a judge of the Constitutional Court per one person. Latvia has one of the longest terms of office of a judge of a constitutional court in Europe. In order to ensure and to reinforce the independence and impartiality of a judge the term of office can not be renewed [like Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms provides for single term of nine years, as desired notably by the Parliamentary Assembly in its Recommendation 1649 (2004)]. Moreover, contrary to a court of general jurisdiction, no confirmation of judges for life is allowed in a constitutional court in order to prevent turning a parliamentary and democratic state into a power of constitutional judges (*J.Pleps, E.Pastars, I.Pakalne Konstitucionālās tiesības - Latvijas Vēstnesis, 2004. pp. 599*)."

The duration of a constitutional judge's term of office combined with the issue of re-election is very significant in the composition of the Constitutional Court. These criteria may affect issues of turnover, the possibility of a political shift in the Constitutional Court, the independence of the judges and institutional stability. It appears that the system to be preferred among the Council of Europe member states would provide for relatively long terms of office with no opportunity for re-election or only one potential re-election.

However, this system must be supplemented by the provision of default mechanisms in cases of a failure to elect, re-elect or replace a judge of the Constitutional Court. "Sound and apparently reliable provisions for terms of office and re-election of constitutional judges may prove to be futile in the face of political opposition to the Court. A mechanism must be in place to ensure the stability or even subsistence of constitutional jurisdictions. A possible solution is the provision in place in Portugal, allowing judges to continue to serve after their term of office has ended and until their successor has been appointed. The lack of this very freedom is criticised in Italy and is the cause of the instability of the Constitutional Court of Hungary."¹⁹

Hence, Amendment 2 is well in compliance with international standards in this field.

Amendment 3 - The Second Paragraph of Article 11, "Procedure for confirming a new judge of the Constitutional Court if the authority of office of a previous judge has terminated"

9.3. The Second Paragraph of Article 11 of the CCL that is currently in force prescribes:

¹⁹ See European Commission for Democracy through Law. Revised Report on the composition of Constitutional Courts. Provisional and revised version (Chapter "Terms of office and re-election of judges") / CDL-JU(97)10 rev, Strasbourg, 24 May 1997 at [http://www.venice.coe.int/docs/1997/CDL-JU\(1997\)010rev-e.asp?&L=E](http://www.venice.coe.int/docs/1997/CDL-JU(1997)010rev-e.asp?&L=E) (access 20 July 2009).

"(2) The Constitutional Court in writing informs the institution, which recommended the confirmation of the judge, whose authority of office has terminated, about termination of authority of office. In case when the judge has been confirmed on the recommendation of not less than ten Saeima members, the Saeima is informed about the fact. The Constitutional Court announces about the termination of authority of office of a judge or his/her reaching the age established in the First Paragraph of Article 8 at least three months earlier."

Amendment 3 proposes the following addition: to supplement the Second Paragraph of Article 11 with the following wording:

"(2) The institution mentioned in the First Paragraph of Article 4 of this Law shall submit a proposition, not later than within one month before the expiry of the term of office of a judge of the Constitutional Court, to the Saeima Presidium regarding confirmation of a new judge of the Constitutional Court."

Amendment 3 therefore gives the term for submitting a proposal for confirmation of a new judge of the Constitutional Court to the Saeima.

The *Annotation of the Amendments* gives the following explanation for Amendment 3:

"Article 11 of the Constitutional Court Law provides for the procedure of confirming a new judge of the Constitutional Court if the term of office of the previous judge has expired and provides for a term, within which the Constitutional Court must inform the institution, which would recommend a new candidate for a position of a judge for confirmation. The norm, however, does not provide for the term, within which the institution submits the proposition regarding confirmation of a new judge of the Constitutional Court to the Saeima, which thus creates a situation when the Constitutional Court would not work in a full body. It is also important that timely nomination of candidates would allow the society to express their opinions regarding the candidate. The regulatory framework effective at present does not allow sometimes, even due to certain substantial reasons, to recognize a candidate as non-compliant with the position."

Amendment 3 is well in compliance with international standards in this field. Amendments 2 and 3 together foresee cases of inaction by the nominating authority and provide for an extension of the term of office of a judge of the Constitutional Court until the appointment of his/her successor; the Venice Commission entirely supports this procedure.²⁰

10. Procedural Changes

Amendments 4 - 7 deal with some procedural issues, most of which are of an organisational-technical nature.

Amendment 4 - Item 3 of the Ninth Paragraph of Article 20, "Initiating a case or refusal to initiate a case"

Item 3 of the Ninth Paragraph of Article 20 of the CCL that is currently in force prescribes:

"(9) When reviewing the applications the Panel experiences the right of refusing to initiate a case, if:

...

²⁰ Ibidem, the Charter "Conclusion".

3) the institution or official, who issued the disputable act, is requested to submit a written reply, describing the true circumstances and legal justification of the case in the term set by the judge of the Constitutional Court, but not less than one month;"

Amendment 4 proposes the following change: to substitute the words "one month" of Item 3 of the Ninth Paragraph of Article 20 with the words "two months".

Amendment 5 – The first sentence of the Seventh Paragraph of Article 22, "Preparing a case for review"

The first sentence of the Seventh Paragraph of Article 22 of the CCL that is currently in force prescribes:

"(7) The case shall be prepared within not more than three months."

Amendment 5 proposes the following change: to substitute the word "three" of the first sentence of the Seventh Paragraph of Article 22 with the words "five".

Amendments 4 and 5 provide that the institution which issued the disputed act is requested to submit a written reply to the Constitutional Court within the term of two months. At the same time, the period for preparing a case is extended up to five months.

Both these amendments are entirely acceptable.

Amendment 6 – The Second Paragraph of Article 32, "Force of a judgment of the Constitutional Court"

The Second Paragraph of Article 32 of the CCL that is currently in force prescribes:

"(2) A judgment of the Constitutional Court shall be binding on all State and municipal institutions (courts included) and officials, and also on natural persons and legal entities."

Amendment 6 proposes the following supplement: to provide for the following wording of the Second Paragraph of Article 32:

"(2) A judgment of the Constitutional Court and interpretation of respective legal provision provided therein shall be binding on all State and municipal institutions (courts included) and officials, and also on natural persons and legal entities."

Amendment 6 proposes a supplement to the existing provision whereby the judgments of the Constitutional Court are binding. Besides the binding effect of the judgment itself, Amendment 6 also proposes the binding effect of the interpretation of the respective legal provision, provided in the judgement of the Constitutional Court. The binding effect of the interpretation of the respective legal provision, provided in the judgement of the Constitutional Court, is inherent in the power of the abstract control of the constitutionality of laws implemented by the Constitutional Court, so the Amendment itself is in principle acceptable.

However, case-law shows that the Constitutional Court may in one decision interpret several different legal norms that are more or less connected with the case under consideration by the Court, but all these norms or interpretations are not always relevant from the constitutional aspect, i.e. they do not all have a constitutional significance. It may therefore be useful to consider a different formulation of Amendment 6, i.e. to make binding only the interpretation of the respective legal provision, provided in the judgement of the Constitutional Court, which has a substantial constitutional meaning, i.e. only the interpretation of the respective legal provision in which the Constitutional Court expresses the fundamental meaning of a particular constitutional right or value.

Amendment 7 - The First Paragraph of Article 33, "Publication of the judgment of the Constitutional Court"

The First Paragraph of Article 33 of the CCL that is currently in force prescribes:

"(1) The judgment of the Constitutional Court shall be published in the newspaper 'Latvijas Vēstnesis' and in the gazette 'Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs', as well as forwarded to the participants of the case, in compliance with the Rules of Procedure of the Constitutional Court, not later than within five days of being reached."

Amendment 7 proposes the following change: to provide for the following wording of the First Paragraph of Article 33:

"(1) The judgment of the Constitutional Court shall be published in the newspaper 'Latvijas Vēstnesis' not later than within five days of being reached, as well as forwarded to the participants of the case in accordance with the Rules of Procedure of the Constitutional Court. If a dissenting opinion of a judge is attached to the case, the opinion shall be published in the newspaper 'Latvijas Vēstnesis' not later than within two months after reaching the judgment of the Constitutional Court."

The *Annotation of the Amendments* gives the following explanation for Amendment 7:

"The First Paragraph of Article 33 of the Constitutional Court Law provides that a judgment of the Constitutional Court shall be published in the newspaper 'Latvijas Vēstnesis' (Official Gazette) and in the gazette 'Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs' not later than within five days of being reached. At present dissenting opinions of judges of the Constitutional Court are not published in the Official Gazette. With a view to favour scientific discussions and contribute into development of legal doctrine, dissenting opinions till now are published only in the compilation of judgment of the Constitutional Court once per year. It cannot be regarded as efficient way of distributing the dissenting opinions."

This Amendment has to be warmly welcomed. It gives the term within which the dissenting opinions to a judgment of the Constitutional Court must be published in the "Latvijas Vēstnesis" (Official Gazette).

Moreover, starting from the rules in other states, and which have shown themselves exceptionally useful for the development of constitutional judiciary, it would be preferable for dissenting opinions to be published together with the respective decision of the Constitutional Court.

11. Remuneration and Vacation of Judges of the Constitutional Court**Introductory Remarks**

Amendment 8 deals with two different issues:

- with the mechanism for determining a monthly salary i.e. the mechanism of remuneration of a judge of the Constitutional Court (the first part of Amendment 8 related to Article 38 of the CCL); and
- with the duration of the annual, additional and unpaid vacations of the judges of the Constitutional Court (the second part of Amendment 8 related to Article 39 of the CCL).

It is always a sensitive issue and a difficult task for an external assessor to assess the mechanism of remuneration and social guarantees of the officials of another State, including

the constitutional judges of that State. This mechanism, by its nature, depends on many internal factors that the assessor does not know very well or at all (economic and social conditions in the state, the level of democratic consciousness, public opinion, level of development of state and public institutions, level of public confidence in these institutions, previous parliamentary practice connected to the regulation of salaries of state officials and the level to which this practice is publicly accepted, etc.).

This opinion is, therefore, only an assessment of whether the proposed mechanism of the remuneration, vacation and other social guarantees for judges of the Constitutional Court conforms in principle with the corresponding international standards in this field.

The most important standards concern the independence and impartiality of the constitutional judiciary in Latvia.

Specifically, an essential precondition for any constitutional court to fulfil its role is the establishment of its status as independent constitutional body. This goal is achieved through classical guarantees of the tenure of judges, their immunity and the incompatibility of their office with other (especially political) functions, and through special requirements in respect of the incumbents' professional qualifications and experience. These guarantees should be fully operative notwithstanding that constitutional court judges are appointed or elected by political institutions under the influence of diverse groups and interests:

"15. ... Once the members are appointed, they act independently and in their individual capacity. They even have the famous 'duty of ingratitude' towards the body which appointed them and the principle of collegiality will help them to live up to these standards."

Institutional guarantees are therefore necessary to safeguard the independent position of constitutional court judges from external pressures. However, they cannot substitute "the ability to understand the constitutional order as an objective order based on certain values which can be expound with higher and durable principles rather than with daily political or other interest. The guarantee of independence is needed to ensure the function of the complex legal reasoning in a given political and societal context, rather than to ensure some abstract freedom of judge as basis for its non-responsibility."²¹

Accordingly, the legal measures proposed for the remuneration, vacation and other social guarantees for the judges of the Constitutional Court must as a rule be examined in the light of the following question: are the legal measures proposed in Amendments 8 and 9 necessary to guarantee and ensure the independence and impartiality of the Latvian constitutional judiciary?

This opinion does not in any way address the amount of the remuneration or compare the amount of the monthly salary of constitutional judges with those of other state officials in Latvia or those of judges in the other constitutional courts in Europe, nor does it assess whether the legal measures proposed are politically appropriate.

The First Part of Amendment 8 - **Article 38, "Remuneration of judges of the Constitutional Court"**

Article 38 of the CCL that is currently in force prescribes:

"Article 38, Remuneration of judges of the Constitutional Court

²¹ Spirovski, *ibidem*.

(1) The monthly base salary of a Constitutional Court judge shall be 15% greater than the monthly base salary of a Supreme Court judge with a premium for qualification category 1.

(2) The monthly base salary of the Vice-President of the Constitutional Court shall be 10% greater than the monthly base salary of a Constitutional Court judge.

(3) The monthly base salary of the President of the Constitutional Court shall be 25% greater than the monthly base salary of a Constitutional Court judge."

Amendment 8 proposes the following change: to provide for the following wording of Article 38:

"Article 38, Remuneration of judges of the Constitutional Court

A judge of the Constitutional Court shall receive a monthly salary. It shall be calculated by applying the following coefficient to the average gross salary (rounded sum to lats) of employees of the State for the previous year as provided in the official statistical report of the Central Statistical Bureau:

1) for a judge of the Constitutional Court – 9.8;

2) for the Vice President of the Constitutional Court – 10.8;

3) for the President of the Republic of Latvia – 12.2."

The Latvian Constitution does not mention the remuneration of judges of the Constitutional Court. The only provision on remuneration at all is Article 33 of the Constitution which prescribes that "the remuneration of members of the Saeima shall be from state funds".

Accordingly, the remuneration of Constitutional Court judges is a matter of the Law (Statute), not of the Constitution.

The first part of Amendment 8, related to Article 38 of the CCL, establishes a new methodology for calculating the monthly salary of Constitutional Court judges, the Vice-President and the President of the Constitutional Court by setting a coefficient to be applied to the annual average gross salary of State employees in the previous year, as provided in the official statistical report of the Central Statistical Bureau.

As the proponent of the Amendment emphasized, the coefficient was established by taking into consideration the present monthly salaries of Constitutional Court judges and requires no additional funding from the State budget.

The *Annotation of the Amendments* gives the following explanation for the first part of Amendment 8 related to Article 38 of the CCL:

"The (present) mechanism for determining a monthly salary of a judge of the Constitutional Court is very complex and unclear."

Although the provisions of Article 38 of the CCL that is currently in force do not seem either "very complex" or "unclear", it is possible that their application in practice causes problems that an external assessor cannot be expected to be aware of, and which do indeed indicate the need to change Article 38 of the CCL.

We shall in this opinion, therefore, limit ourselves to the finding that the proposed mechanism for remunerating Constitutional Court judges is acceptable, given that it is impossible to assess how well it is balanced with the specific social, economic and political conditions in Latvia.

The Second Part of Amendment 8 – **Article 39 of the CCL, "Social guarantees for judges of the Constitutional Court"**

Article 39 of the CCL that is currently in force prescribes:

"Article 39, Social guarantees for judges of the Constitutional Court

All social guarantees and relief provided for judges in normative acts currently in effect shall also apply to judges of the Constitutional Court."

The second part of Amendment 8 proposes the following change: to provide for the following wording of Article 39:

"Article 39 Vacation of judges of the Constitutional Court

(1) Judges of the Constitutional Court shall be granted an annual paid vacation of not less than five calendar weeks.

(2) A judge of the Constitutional Court shall be assigned a paid additional vacation – three calendar days for each five years of office of a judge in any court, which would in total not exceed two calendar weeks.

(3) If it is necessary for a judge of the Constitutional Court and working conditions permit, a judge of the Constitutional Court shall be granted an unpaid vacation."

The second part of Amendment 8, related to Article 39 of the CCL, introduces an annual paid vacation, additional paid vacation and an unpaid vacation for the judges of the Constitutional Court.

As the *Annotation of the Amendments* states, the questions concerning the vacation of Constitutional Court judges were settled before they were regulated in the Law "On Judicial Power".

Regulating the vacation of Constitutional Court judges is a matter for the national legislator and depends on many internal factors (see "Introductory Remarks" of this part of the Opinion). From the aspect of international standards, the only question that should be answered seems to be the following: does the proposed mechanism for the vacation of the judges also guarantee the unhindered, regular and continuous functioning of the Constitutional Court?

To the best of our knowledge, in most other states there is a period when the constitutional court is not in session, in which judges and other employees have a so-called collective annual vacation. As a rule, some judges and members of all the professional services in the court are on duty in this period to ensure the court's continuous and regular functioning. Judges must, as a rule, break off their annual vacation at the summons of the president.

In other words, the right to a vacation of judges and employees of constitutional courts must never be to the detriment of the flawless functioning of the constitutional institution itself.

Therefore, if the vacation of the Constitutional Court judges is to be regulated by law (CCL), it would be legally consistent, and above all expedient, to build mechanisms into that law ensuring the presence of the necessary majority of judges at every moment to guarantee the unhindered work of the Constitutional Court.

12. Additional Social Guarantees for Judges of the Constitutional Court
Amendment 9 - **Chapter V, "Financing of the Constitutional Court, Remuneration of and Social Guarantees for Judges"**

Chapter V of the CCL that is currently in force prescribes:

"Chapter V

FINANCING OF THE CONSTITUTIONAL COURT, REMUNERATION OF AND SOCIAL GUARANTEES FOR JUDGES

Article 37, Financing of the Constitutional Court

The Constitutional Court shall be financed from the state budget."

Article 38 has been quoted along with Amendment 8

Article 39 has been quoted along with Amendment 8

Amendment 9 deals with three different issues:

- with the bonus and premium system for judges of the Constitutional Court (the first part of Amendment 9 related to the new Article 39.1);
- with the other (additional) social guarantees for judges of the Constitutional Court (the second part of Amendment 9 related to the new Article 39.2); and
- with the right to a long service pension for judges of the Constitutional Court (the third part of Amendment 9 related to the new Article 39.3).

The *Annotation of the Amendments* gives the following explanation for Amendment 9:

"The effective regulation regarding social guarantees of judges of the Constitutional Court, like the duration of vacation, bonus awarding system, allowances and health insurance, that is already established in other normative acts can be regarded as inefficient.

When assessing the "basket" of social guarantees for judges and higher officials of the State, as well as the social guarantees of judges of other constitutional courts, it can be concluded that it is necessary to improve the social guarantees system of judges of the Constitutional Court by ensuring social guarantees for those officials who 'impersonate the judicial system and constitutional values of the respective State', including the time after the end of the term of office.

The fact that the Latvian labour market is comparatively small, whereas normative acts provide for a range of restrictions for State officials (Constitutional Court judges included) after the end of the term of office, whilst a judge of the Constitutional Court is not provided with compensation after leaving the position, is also of great importance. Under such circumstances, at the final stage of the term of office, a state official starts looking for another employment, which, in turn, can cause the risk of adopting not objective decisions and can affect independence of the judge.

The Draft Amendment provides for the same social guaranties (Article 39.2) as members of the Parliament have been enjoying."

The First Part of Amendment 9 – The new Article 39.1, "Bonus and premium system for judges of the Constitutional Court"

The first part of Amendment 9 proposes the following change: to supplement Chapter V with Article 39.1 in the following wording:

"Article 39.1 Bonus and premium system for judges of the Constitutional Court

(1) A judge of the Constitutional Court can be awarded a bonus in accordance with contribution to the work using for this the financial resources at the amount up to 15 percent out of the planned salary fund, as well as resources saved from the salary fund.

(2) A judge of the Constitutional Court, for fulfilling the duties of a judge of the Constitutional Court on leave or duties of a vacant position in addition to his or her direct duties of the position, shall be paid a premium at the amount up to 20 percent of his or her monthly salary using the financial resources saved from the salary fund. The total amount of bonuses shall not exceed a monthly salary of a judge of the Constitutional Court on leave or that of a vacant position.

(3) If several judges of the Constitutional Court fulfil the duties of a judge of the Constitutional Court on leave or those of a vacant position, the total sum of bonuses shall not exceed a monthly salary of a judge of the Constitutional Court on leave or that of a vacant position."

The first part of Amendment 9, related to the new Article 39.1, regulates the procedure for awarding bonuses and premiums to Constitutional Court judges for performing additional duties.

To the best of my knowledge, the mechanism of bonuses and premiums for judges of constitutional courts for performing duties in addition to their direct duties of the position, and bonuses in accordance with the contribution of a particular judge to the work of the Constitutional Court – as proposed in the new Article 39.1 – would be one and the same.

The proposed Article 39.1 concerns the work of a judge of the Constitutional Court, and it is objectively difficult to determine when the judge's "direct duties of the position" end, and when his/her "additional duties of the position", i.e. supplementary duties, together with the hardly quantifiable "contribution to the work", may be used as grounds for granting the judge bonuses and premiums. If I properly understood the proposed mechanism of bonuses and premiums, its essence is the distribution of the monthly salary of a Constitutional Court judge on leave, or that of a vacant position, among "active" judges (together with financial resources of up to 15 percent out of the planned salary fund, as well as resources saved from the salary fund, for the contribution of the judges to the work of the Court).

Because of the special burden of being a judge of the Constitutional Court, the proposed mechanism of bonuses and premiums could not *a priori* be considered unacceptable (the national legislator is, in any case, empowered to accept it), but there is no doubt that, defined as it is, it does not serve to ensure the independence of constitutional judicature. It seems to be a set of privileges or special advantages that the national legislator may grant to Constitutional Court judges because of their position in the national constitutional order, not one of the guarantees necessary to ensure their independence and impartiality.

The Second Part of Amendment 9 – The new Article 39.2, "Other social guarantees for judges of the Constitutional Court"

The second part of Amendment 9 proposes the following change: to supplement Chapter V with Article 39.2 in the following wording:

"Article 39.2, Other social guarantees for judges of the Constitutional Court

(1) A judge of the Constitutional Court, when being granted an annual vacation, shall be paid an extraordinary allowance at the amount of one month's salary.

(2) A judge of the Constitutional Court that has been injured in a serious accident shall be paid an extraordinary allowance in the amount of one month's salary.

The allowance shall not be paid if the accident has occurred due to an unseemly or undignified behaviour of the judge, which would thus discredit the judicial power.

(3) A judge of the Constitutional Court shall be paid an allowance in the amount of one month's salary in the event of the death of a family member or a dependant. A judge of the Constitutional Court shall not be paid the allowance if another family member of the judge of the Constitutional Court who is employed in a public institution and has the right, according to an external normative act, to receive an allowance due to a death of a family member or a dependant has already applied for the allowance or received it.

(4) A judge of the Constitutional Court shall be paid an allowance in the amount of three monthly salaries in the event of a child birth. If both parents are employed in public institutions, the normative acts of which, regulating their functioning, provide for the rights to a childbirth allowance, only one of the parents shall have the rights to receive the allowance.

(5) The State shall mandatorily insure the life and health of a judge of the Constitutional Court at the amount up to 15 monthly salaries.

(6) A judge of the Constitutional Court, at the end of the term of office or after dismissal from the position due to health conditions shall be paid an extraordinary allowance at the amount of three monthly salaries in accordance with the First Paragraph of Article 10 of this Law.

(7) The following shall be reimbursed for a judge of the Constitutional Court:

1) accommodation expenses if a judge of the Constitutional Court does not live in Riga and if in order to fulfil his duties as a judge of the Constitutional Court he needs to pay for accommodation in Riga. Accommodation expenses shall be reimbursed according to the actual expenditure but not exceeding the average gross salary (rounded sum to last) of employees of public sector of the State for the previous year as provided in the official statistical report of the Central Statistical Bureau by applying a coefficient of 1.26;

2) transport expenses according to the actual expenditure by applying the following coefficients:

a) for a judge of the Constitutional Court living in Riga or within 60 km of Riga – 0.43,

b) for a judge of the Constitutional Court living from 60 to 150 km from Riga – 0.67,

c) for a judge of the Constitutional Court living farther than 150 km from Riga – 0.9.

(8) Actual expenditure for the purpose of Item 2 of the Seventh Paragraph of this Article shall be the expenses for the use of inter-city public transport and the expenses for the use of a vehicle owned or possessed by a judge of the Constitutional Court.

(9) Transportation expenses shall not be reimbursed for those judges of the Constitutional Court who have been assigned a car for needs related to fulfilling their duties.

(10) The reimbursements mentioned in the Seventh Paragraph of this Article are tax exempt. The transportation expenses mentioned in Item 2 of the Seventh Paragraph of this Article shall be reimbursed after submitting documents attesting the factual expenses."

The second part of Amendment 9, related to the new Article 39.2, enumerates the cases of allowances, provides for mandatory health insurance, lists reimbursable expenses, i.e. accommodation and transportation expenses, and grants an allowance after the expiry of the term of office.

There should be no objections to the proposed part of Amendment 9 (Article 39.2) provided that the Latvian legislator considers it acceptable.

As the *Annotation of the Amendments* states, this part of Amendment 9 (Article 39.2) provides for the same social guarantees enjoyed by members of Parliament.

In some other states national legislation makes a difference between so-called state officials (President of the Republic, Speaker and members of Parliament, Prime Minister and ministers, etc.) and so-called judicial officials (judges of courts of general jurisdiction), and regulates their rights (remuneration, social guarantees, pensions) in different ways. In some of these states judges of the Constitutional Court are considered to be state officials, not judicial officials, so their rights to a greater or lesser measure follow those of the members of Parliament.

For example, the judges of the Constitutional Court of the Republic of Croatia have the position of state not of judicial officials, considering that the Croatian Constitutional Court is not considered as a part of the judicial branch of power but as an independent constitutional body outside of government organized on the principle of the separation of powers into the legislative, executive and judicial branches.

Consequently, the remuneration and social guarantees of the judges of the Croatian Constitutional Court are comparable with the rights of the members of the Croatian Parliament, not with the rights of the judges of courts of general jurisdiction. Experts have, however, for some time already been discussing whether the material position of constitutional court judges should be regulated separately, in the Constitutional Act on the Constitutional Court of the Republic of Croatia, and completely independently from the way in which the rights of the members of Parliament and other state officials are regulated.

The decision to equalise the additional social guarantees for the judges of the Constitutional Court with those of the members of the Saeima (Article 39.2), therefore, may also to a certain extent depend on the constitutional position enjoyed by the Constitutional Court in Latvia, where it is part of the judicial branch of power (see Point 7 of this Opinion).

Nevertheless, this kind of decision mostly depends on the political assessment of its expediency, which is made by the national legislator.

Finally, if it is true that the proposed Article 39.2 contains the same social guarantees as those enjoyed by members of the Saeima, would it not be technically more expedient not to explicitly list all these rights but to regulate in one sentence: "The judges of the Constitution Court shall have the same rights concerning allowances, mandatory health insurance, reimbursable expenses and other social guarantees as members of the Saeima."?

The Third Part of Amendment 9 – **New Article 39.3, "Long service pensions"**

The third part of Amendment 9 proposes the following change: to supplement Chapter V with Article 39.3 in the following wording:

"Article 39.3 Long service pensions

A judge of the Constitutional Court and a person who held the office of a judge of the Constitutional Court shall have the right to a long service pension under the Law on Long Service Pensions for Judges."

The third part of Amendment 9, related to the new Article 39.3, provides judges of the Constitutional Court with the right to a long service pension.

There are neither objections to nor suggestions about this part of Amendment 9 (Article 39.3).

13. Administration of the Constitutional Court

Amendment 10 – **Chapter VI, "Officials and employees of the Constitutional Court"**

Chapter VI of the CCL that is currently in force prescribes:

*"Chapter VI
OFFICIALS AND EMPLOYEES OF THE CONSTITUTIONAL COURT*

Article 40, Officials and employees of the Constitutional Court

(1) The list of positions of officials and employees of the Constitutional Court shall be established by the President of the Constitutional Court within the limits of the Court's budget.

(2) The employment relations between the Constitutional Court and its officials and employees shall be regulated by the Labour Law.

(3) All benefits and social guarantees provided for officials and employees of the judiciary by the Law "On Judicial Power" and other normative acts currently in effect shall apply to the officials and employees of the Constitutional Court."

Amendment 10 proposes the following change: to provide for the following wording of Chapter VI:

*"Chapter VI
ADMINISTRATION, OFFICIALS AND EMPLOYEES OF THE CONSTITUTIONAL COURT*

Article 40, Administration of the Constitutional Court

(1) Administration of the Constitutional Court is a structural unit of the Constitutional Court that shall organize and ensure functioning of the Constitutional Court.

(2) The head of the Administration of the Constitutional Court shall be employed and dismissed by the President of the Constitutional Court.

- (3) Administration of the Constitutional Court:*
- 1) shall perform financial management;*
 - 2) shall ensure material and technical provision;*
 - 3) shall carry out record keeping;*
 - 4) shall organize personnel management and training;*
 - 5) shall ensure communication with the society;*
 - 6) shall ensure international collaboration.*

Article 41. Officials and employees of the Constitutional Court

(1) The staff list of the Constitutional Court shall be established by the President of the Constitutional Court within the limits of the Courts' budget.

(2) The employment relations between the Constitutional Court and its officials and employees shall be regulated by the Latvian Labour Code unless this Law has ruled otherwise.

(3) An adviser and an assistant to a judge of the Constitutional Court shall be employed for a term that is equal to the term of office of a judge of the Constitutional Court.

(4) All benefits and social guarantees provided for officials of the State civil service in other normative acts shall apply to the officials and employees of the Constitutional Court."

The *Annotation of the Amendments* gives the following explanation for Amendment 10:

"The Constitutional Court Law does not provide that administrative work of the Constitutional Court shall be organized and ensured by a structural unit formed for this particular purpose. Hence, in addition to the existent duties as a judge and a chairperson, the job responsibilities of the President of the Constitutional Court include a

range of additional responsibilities, which requires time that should be devoted to his or her direct duties of the position.

Labour relations of other officials and employees of the Constitutional Court including advisors and assistants to the judges (legal clerks) are regulated by the Latvian Labour Code. The specific cases defined in the Labour Law when it is permitted to conclude a short-time contract do not include a contract of the advisors or assistants to higher officials (judges included). Taking into consideration the specific character of the work, it is clear that it is impossible to guarantee the position of an advisor or assistant to the judges of the Constitutional Court for an unlimited term."

In summary, Amendment 10:

- provides for the formation of a new structural unit of the Constitutional Court, namely, the Administration of the Court, which would organize and ensure the administrative functioning of the Court;
- establishes that advisors and assistants to judges of the Constitutional Court shall be employed for a term that is equal to the term of office of the judge; it specifies the normative acts that shall be applied to officials and employees of the Constitutional Court in the field of social guarantees.

The foundation of a separate organisational unit within the Constitutional Court to deal with legal and administrative issues connected with the operation of the Constitutional Court is completely in accordance with the internal organisation of most constitutional courts in other states.

Nevertheless, the provisions proposed do not answer all the questions that are essential for the constitution and proper and effective functioning of the Administration of the Court. Especially unclear is the position of the Head of the Administration (for example, his position within the hierarchic structure in the Court, especially in relation to the advisors and assistants to judges of the Constitutional Court; the relationship between the President of the Court and the Head of the Administration, etc.).

If it is not considered opportune to regulate all these issues by law, it might be good to add a general provision whereby all other issues connected with the Administration of the Constitutional Court and its heads will be regulated in the Rules of Procedure of the Constitutional Court or by a special enactment of the Court.

The other provisions of Amendment 10 give no cause for concern.

IV. CONCLUSION

The main results of the assessment can be summarized as follows:

- the requirements concerning a candidate for the position of a judge of the Constitutional Court (Amendment 1 to the Second Paragraph of Article 4 of the CCL) are basically in compliance with international standards;
- the requirements concerning the term of office of a judge of the Constitutional Court (Amendment 2 to the First and Third Paragraphs of Article 7 and Amendment 3 to the Second Paragraph of Article 11 of the CCL) are in compliance with international standards;

- the procedural changes (Amendments 4 – 7 to Item 3 of the Ninth Paragraph of Article 20, the first sentence of the Seventh Paragraph of Article 22, the Second Paragraph of Article 32 and the First Paragraph of Article 33) are well in compliance with international standards and are welcome, with the recommendation to examine possibilities for the further improvement of Amendments 6 and 7;
- the proposed mechanism for the remuneration of the judges of the Constitutional Court (the First Part of Amendment 8 to Article 38) is acceptable, however, it is not possible to assess the level of its accordance with the specific social, economic and political conditions in Latvia;
- the proposed provisions concerning the vacation of judges of the Constitutional Court (the Second Part of Amendment 8 to Article 39) may only be evaluated within the specific national context, so whether they will be accepted depends exclusively on the political assessment of the national legislator. Independently of this, however, Article 39 should be supplemented with a mechanism ensuring the presence at every moment of the necessary majority of judges to ensure the unhindered, regular and continuous functioning of the Constitutional Court;
- the proposed mechanism of bonuses and premiums (the First Part of Amendment 9 to new Article 39.1) cannot be considered a means of ensuring the independence and impartiality of the Constitutional Court. It is more a set of privileges or special advantages for the judges of the Constitutional Court that can only be evaluated in the specific national context, so its acceptance depends exclusively on the political assessment of the national legislator;
- granting Constitutional Court judges additional social guarantees equal to those enjoyed by the members of the Saeima (Amendment 9 to the new Article 39.2.) may in a certain measure depend on the constitutional position of the Constitutional Court in Latvia, but mostly depends on the political assessment of the expediency of such a decision which must exclusively be made by the national legislator;
- establishing a special administrative unit (Amendment 10 to Chapter VI of the CCL) is well in compliance with the internal organization of the constitutional courts in other countries, though some clarifications and/or supplements would be welcomed.